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Appellate Court of Maryland
7/12/2023 12:04 AM

RECORD EXTRACT OF APPELLANT

IN THE
APPELLATE COURT
OF MARYLAND

September Term 2023,
No. 61

JUSTIN HOLDER

Appellant

V.

BENJAMIN ESTES

Appellee

Appeal from the Circuit Court of Washington County
The Honorable Andrew F. Wilkinson

RECORD EXTRACT

Volume 5F

JUSTIN HOLDER
APPELLANT

E-FILED; Washington Circuit Court
Docket: 10/4/2022 7:01 AM; Submission: 10/4/2022 7:01 AM

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. C-21-cv-20-000430
	:	
JUSTIN HOLDER, *et al.*	:	
	:	
Defendants.	:	

PLAINTIFF'S BENCH MEMORANDUM

In Maryland, by common law, title to ***navigable*** waters is largely vested in the State. *See Wicks v. Howard*, 40 Md. App. 135, 136 (1978) (emphasis added). A riparian landowner is "a property owner whose land borders on ***tidal*** wetlands or waters of the State" and, by virtue of this ownership, is entitled to certain riparian rights, including the right to reasonable access to ***navigable*** waters." *People's Counsel for Baltimore Cnty. v. Md. Marine Mfg. Co.*, 316 Md. 491, 502 (1989) (emphasis added). A riparian landowner is "one who owns land bordering upon, bounded by, fronting upon, abutting or adjacent and contiguous to and in contact with a body of water, such as a river, bay, or running stream." *People's Counsel for Baltimore Cnty. v. Md. Marine Mfg. Co.*, 316 Md. 491, 493 n.1 (1989). *See Gunby v. Olde Severna Park Improvement Ass'n, Inc.*, 174 Md. App. 189, 239 (2007) (stating that riparian rights are rights that relate to "the physical relationship of a body of water to the land abutting it"). Riparian rights include the right "to own the subsoil of nonnavigable streams and other 'private' waters." *Muffoletto v. Towers*, 244 Md. App. 510, 534 (2020).

"The public [has] a right, as common law, to ***navigate*** over every part of a common ***navigable*** river." *Becker v. Litty*, 318 Md. 76, 83 (1989) (emphasis added). While navigation on navigable waters is a public right, "[t]he right to go from [a riparian owner's] land to the river

and from the river to his land is a private property right of the riparian owner." *Id.* at 82-83; *County Comm'rs. v. Claggett*, 152 Md. App. 70, 89-90 (2003).

Maryland courts have applied the "ebb-and-flow-of-the-tide" test when determining if water is navigable. "Waters are deemed navigable for these purposes if, and only if, they are subject to the ebb and flow of tides." *Wicks*, 40 Md. App. at 136. *See also Hirsch v. Md. Dep't of Nat. Resources*, 288 Md. 95, 99 (1980) ("Navigable water has traditionally been defined in Maryland as water subject to the ebb and flow of the tide"); *Harbor Island Marina v. Bd. of Cnty. Comm'rs*, 286 Md. 303, 315 (1979) (stating that the doctrine of riparian rights recognizes that owners of "land adjacent to bodies of water in which the tide ebbs and flows" have certain rights to the water).

Maryland courts have also "recognized the navigable in fact test—whether waters in their natural state are in fact navigable." *Green v. Eldridge*, 230 Md. 441, 446 (1963); *Gray v. Gray*, 178 Md. 566 (1940); *City of Havre de Grace v. Harlow*, 129 Md. 265 (1916); *Assateague Island Condemnation Cases Opinion No. 1 v. 222.0 Acres*, 306 F. Supp. 138, 151 (D. Md. 1969). In *Green*, the court found that the stream at issue and marsh were navigable based on testimony by both parties about the water depth and traffic of small boats in the disputed area. 230 Md. at 447-48. The Court considered that there had been testimony about "the presence of and movement by boats of various sizes in the disputed area," that a prior owner rented out boats in the area and kept some at a dock, and that individuals would travel in a motorboat both at high and low tide. *Id.* at 448. In *United States Use of Washington Acqueduct v. Great Falls Mfg. Co.*, 21 Md. 199 (1864), the Court stated that the term "navigable waters" refers to "so much of the rivers and streams of the State as are available for boating, scowing, rafting or floating saw-logs, or other valuable floatage."

Courts have found that it may be unnecessary to consider whether to apply the Maryland ebb-and-flow test for navigable waters or the federal navigable-in-fact test because the two tests are functionally complementary of each other. *See Wagner*, 210 Md. at 65; *Owen v. Hubbard*, 260 Md. 146, 152 n.1 (1970).

Importantly, merely because one part of a body of water is navigable does not make the entire body of water navigable:

> In dealing with navigable waters some matters may be regarded as axiomatic; thus, **a stream may be navigable in part and non-navigable in part, and the navigability of one part does not of itself render the entire stream throughout the full length of its course a navigable stream**; also, a stream which is non navigable may be made navigable by the removal of those things which constitute obstructions to its navigability; and conversely, a stream navigable at one time may as the result of any one or more of a variety of causes become thereafter non-navigable.

Harlow, 129 Md. at 271-72 (emphasis added). In *Green*, the Court held that the State, not the property owner, held title to that **portion** of the stream and marsh which was navigable." 230 Md. at 447 (emphasis added).

To the extent Mr. Holder attempts to rely on COMAR 26.08.02.08, that regulation is inapplicable to any consideration of the navigability of the creeks. COMAR 26.08.02.08 is titled "Subtitle 08. Water Pollution," and merely classifies the Little Antietam Creek and its tributaries. Nowhere in COMAR 26.08 do the regulations provide for a general public easement; instead, the regulations merely designate what the surface water may be used for in order to protect surface water quality.

Respectfully submitted,

By: */s/*_____
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 4, 2022, a copy of the foregoing was served on all counsel of record and parties via MDEC.

*/s/*_____
Alyse L. Prawde

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES	*	
Plaintiff	*	
v.	*	
JUSTIN HOLDER, Et Al	*	CASE NO.: C-21-CV-20-000430
Defendant(s)	*	

* *

DEFENDANT JUSTIN HOLDER's PARTIAL OPPOSITION TO PLAINTIFF's BENCH TRIAL MEMORANDUM

COMES NOW Defendant, Justin Kyle Holder, in proper person and files this Defendant Justin Holder's Partial Opposition to Plaintiff's Bench Trial Memorandum, and for reasons states:

OPPOSITION

Plaintiff Estes, in obtaining preliminary injunction[1] before trial of fact,[2] has taken an extreme and untenable position contrary to the Status Quo and Md. Law.[3] The Law in Maryland ***ad medium film aqua sub publicum*** unaltered by the legislature since the King's

[1] "**(a) Notice.** A court may not issue a preliminary injunction without notice to all parties **and an opportunity for a full adversary hearing on the propriety of its issuance.(b) Consolidation With Trial on Merits.** Before or after commencement of the hearing on the preliminary injunction, the court may order that a trial on the merits be advanced and consolidated with the preliminary injunction hearing, **so long as any right to trial by jury is preserved**." (Emphasis supplied) *Rule 15-505 - Preliminary Injunction, Md. R. Spec. Proc. 15-505*

[2]"Maryland courts have also "recognized the navigable in fact test—whether waters in their natural state are in fact navigable." *Green v. Eldridge*, 230 Md. 441, 446 (1963); *Gray v. Gray*, 178 Md. 566 (1940); *City of Havre de Grace v. Harlow*, 129 Md. 265 (1916); *Assateague Island Condemnation Cases Opinion No. 1 v. 222.0 Acres*, 306 F. Supp. 138, 151 (D. Md. 1969). In *Green*, the court found that the stream at issue and marsh were navigable based on testimony by both parties about the water depth...In *Green*, the Court held that the State, not the property owner, held title to that **portion** of the stream and marsh which was navigable." 230 Md. at 447 (emphasis added)." See Plaintiff's Bench Trial Memorandum p. 2-3 as a determination of fact for a jury.

Also see *Higgins v. Barnes*, 530 A.2d 724, 310 Md. 532 (1987): "We are constitutionally required to 'inviolably preserve' the right of trial by jury in actions at law, and so 'where both legal and equitable issues are presented in a single case, "only under most imperative circumstances ... can the right to a jury trial of legal issues be lost through prior determination of equitable claims."' *Dairy Queen v. Wood, supra,* 369 U.S. at 472-73, 82 S.Ct. at 897 (quoting *Beacon Theatres, supra,* 359 U.S. at 510-11, 79 S.Ct. at 957)."

[3] Plaintiff Estes' reliance on what definition of navigable waters (see Plaintiff's Bench Trial Memorandum at p1-3 generally) is a red herring, particularly Chapter 129 of the Acts of 1862§ 45 giving unto the owners of land abutting navigable waters THE SAME RIGHTS AS THOSE ON NON-NAVIGABLE WATERS.

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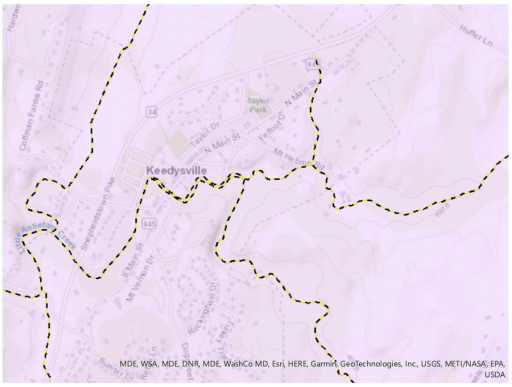
Charter in 1632, see *Browne v Kennedy*, 5 Hard. & J. 195, 205-06 MD. (1821) affirmed in *Bowie v. Western Maryland R. Terminal Co.,* 133 Md. 1 - 1918; also see *ANNAPOLIS ROADS v. Lindsay*, 45 A.3d 749, 205 Md. App. 270 (Ct. Spec. App. 2012). Not only do Defendants claim under title of a riparian owner,[4] Defendants are members of the Public. The legislative intent to preserve and provide access to those public rights in Maryland Waterways affirmed in Chapter 140 of the Acts of 2013, House Bill 0797. See also MD. Local Government Code Ann. § 1-1311 " (a)A county or municipality, in developing a construction or improvement project involving a bridge or other transportation facility that is adjacent to or crosses a waterway, shall consider any reasonable and appropriate measures to provide or improve in the vicinity of the bridge or other transportation facility water access for fishing, canoeing, kayaking, or any other nonmotorized water dependent recreational activity." Md. Code Regs. 26.17.04.02 - Definitions and MD. Environment Code Ann. § 5-101 [define "waters of the State:][5]

> "(l) 'Waters of the State' includes: (4) All ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and (5) The floodplain of free–flowing waters determined by the Department on the basis of the 100–year flood frequency."

To view an interactive map of Maryland Waterways [pertinent area displayed]:

https://mde.maryland.gov/programs/water/tmdl/waterqualitystandards/pages/designatedusesmaps.aspx



[4] "A riparian landowner is "one who owns land bordering upon, bounded by, fronting upon, abutting or adjacent and contiguous to and in contact with a body of water, such as a river, bay, or running stream." *People's Counsel for Baltimore Cnty. v. Md. Marine Mfg. Co.*, 316 Md. 491, 493 n.1 (1989). *See Gunby v. Olde Severna Park Improvement Ass'n, Inc.*, 174 Md. App. 189, 239 (2007) (stating that riparian rights are rights that relate to "the physical relationship of a body of water to the land abutting it"). Riparian rights include the right "to own the subsoil of nonnavigable streams and other 'private' waters." *Muffoletto v. Towers*, 244 Md. App. 510, 534 (2020)." See Plaintiff's Bench Trial Memorandum p. 1.

[5] See also MD. Environment Code Ann. § 5-501 generally, Md. Code Regs. 26.17.04.10. General Waterway Construction Permit, Maryland Manual Online and Md. Code Regs. 26.08.02.08 generally.

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"This contention seems to be based primarily upon Article IV of the Charter of Maryland, 20 June 1632, by which Charles I granted to Caecilius Calvert, Lord Baltimore

> '...with the fishings of every kind of fish, as well of whales, sturgeons, and other royal fish, as of other fish, in the sea, bays, straits or rivers, within the premises, and the fish there taken: ...' 1 Maxcy, Laws of Maryland 1, 2 (1811).
>
> ....and then subjected the grant to the reservation contained in Article XVI:
>
> '...Saving always to US, our heirs and successors, and to all the subjects of our kingdoms of England and Ireland, of US, our heirs and successors, the liberty of fishing for sea-fish, as well in the sea, bays, straits, and navigable rivers, as in the harbours, bays, and creeks of the province aforesaid, and *the privilege of salting and drying fish on the shores of the same province;...'*

The scope of the rights reserved is strikingly reminiscent of Roman law.[6] This is not surprising, since Justinian's Institutes were well known in Britain by the 13th century. *See* 1 F. Pollock & F. Maitland, The History of English Law 119 (2d ed. 1905)." *Dep't of Natural Res. v. Ocean City*, 332 A.2d 630, 274 Md. 1 (1975).

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[6] T. Cooper, The Institutes of Justinian, Book 2, Title 1, 67-68 (1812):
"§ 1

"Things common to mankind by the law of nature, are the air, running water, the sea, and consequently the shores of the sea; no man therefore is prohibited from approaching any part of the sea-shore, whilst he abstains from damaging farms, monuments, edifices, & c. which are not in common as the sea is."

* * *

"§ 3

"All that tract of land, over which the greatest winter flood extends itself, is the sea-shore."

* * *

"§ 5

"The use of the sea-shore, as well as of the sea, is also public by the law of nations; and therefore any person may erect a cottage upon it, to which he may resort to dry his nets, and hawl them from the water; for the shores are not understood to be property in any man, but are compared to the sea itself, and to the sand or ground which is under the sea."

The Latin text of the Institutes uses the word *casa* in § 5 which is translated as *cottage.* Alternate translations are *cabin, shed,* or *hut.* The Latin text of the Maryland Charter uses the words *casa* (cabin) and "tuguriola." *Compare tugurium* (hut). *See* The White Latin Dictionary 97, 622 (1948).

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Md. Code Regs. 26.02.02.02 placing certain reasonable restrictions on the public rights in waterways as acknowledged on p.3 of Plaintiffs Bench Trial Memorandum; such as "water contact recreation" discussed in March 11th, 2021 hearing in case C-21-CV-21-420.

Plaintiff Estes waived his rights to litigate this injunction in January 7th, 2022 Stipulated dismissal and in the March 11th, 2021 C-21-CV-21-420 hearing:[7]

> "the right of the public, if any, to make use of the waters of the Little Antietam Creek, or any other waters on the Estes Property, are not being litigated or adjudicated in this case as stated and memorialized in the jointly-filed Stipulation filed in this case on December 17, 2021...the State of Maryland reserves the right to regulate or assert claims over the water resources of Little Antietam Creek (or any other creeks, streams or tributaries), including nontidal waterways, the nontidal floodplain, nontidal wetlands and their buffers, and water appropriations"

Plaintiff Estes, again litigating as the wind blows is judicially estopped, from now obtaining an injunction against the Defendants and/or public. The waters on the Estes property also fall under the exclusive jurisdiction[8] of the United States, see 33 C.F.R. § 329 and/or 1899 Ports and Harbors Act § 9. & 10. Plaintiff Estes fails to join the United States or Maryland Department of General Services in this preliminary injunction. In order for Plaintiff Estes to obtain injunctive relief enjoining the public or Defendants from the Estes property defined as the "waters of the State" (which include the floodplain) his redress clearly lies with the legislature, this Court has no jurisdiction.

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[7] Transcript to be provided at future preliminary injunction hearing if scheduled.

[8] "In summary, when determining whether a water body qualifies as a "traditional navigable water" (i.e., an (a)(1) water), relevant considerations include whether a Corps District has determined that the water body is a navigable water of the United States pursuant to 33 C.F.R § 329.14, or the water body qualifies as a navigable water of the United States under any of the tests set forth in 33 C.F.R. § 329, or a federal court has determined that the water body is navigable-in-fact under federal law for any purpose, or the water body is "navigable-in-fact" under the standards that have been used by the federal courts."See Clean Water Act Jurisdiction Following the U .S.Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States.*

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Defendant Justin Holder saves and reserves further arguments for Hearing, and request all facts tried by jury.

Respectfully submitted,

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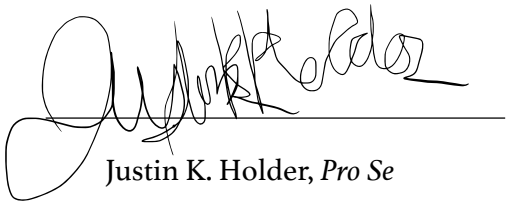
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of October 2022, a copy of the foregoing Defendant Justin Holder's Defendant Justin Holder's Partial Opposition to Plaintiff's Bench Trial Memorandum was served via the MDEC system to :

Timothy Maloney, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se;*



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IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES	*	
Plaintiff	*	
v.	*	
	*	CASE NO.: C-21-CV-20-000430
JUSTIN HOLDER, *et al.,*	*	
Defendant(s)	*	

* *

MOTION TO ALTER OR AMEND JUDGEMENT

COMES NOW Defendant, Justin Kyle Holder, in proper person and files this Motion to Alter or Amend Judgement in accordance with Md. Rule 2-535, and for reasons states:

INTRODUCTION

The Honorable Court issued a September 20th, 2022 Order in the instant case (the "Order"). The Defendant request the Honorable Court further specify, clarify and amend the Order in line with Maryland Law to facilitate expedient resolution of remaining matters. Plaintiff Estes has asserted in this and other litigation that he does not contest the Public Rights to Navigate (in kayak) the "waters of the State" on the "Estes Property" so long as there is no contact with the bed. To argue over the creek bed of a public waterway (*eg* "waters of the State" whether navigable or non-navigable)[1] is as useful as arguing over the bed of Washington Street (US Route 40 in fee or RoW) in front of the Circuit Courthouse![2] *Ad medium filum aqua sub publicum* (see *infra*) and MD. Real Property Code Ann § 2-114 the same legal doctrine. Plaintiff's position is absurd, against public policy and untenable.

[1] In an October 3rd, 2022 "Bench Trial Memorandum" Plaintiff Estes raises a question of fact as to the navigability of the "waters of the State" on the "Estes Property", it is the Defendant's position that a January 7th, 2022 Stipulated Dismissal (affirming a December 17th, 2021 Stipulation) moots this question of fact as to the instant suit and/or the Plaintiff has failed to join the proper parties.

[2] A **public** road**way** has an improved bed and extends to the limits of a Right of Way line (for drainage or future shoulder); a **public** water**way** has a submerged bed extending to the limits of the floodplain (dependent upon water flow and seasonal rainfall); in either case the public rights extend to the limits of the right of way or floodplain. After the Dec. 17th, 2021 Stipulation, Plaintiff can not meet his burden to rebut this presumption as a matter of law because it is not being litigated.

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PROCEDURAL POSTURE

1. On September 20th, 2022 Honorable Andrew F. Wilkinson entered an order in the instant case "that the boundary line between the Plaintiff's lands and the lands of Defendant Uncle Eddie's Brokedown Palace, LLC is as indicated on Plat 10955, one of the Plat Records of Washington County, Maryland.
2. Defendant, Justin Holder, would concede for the purposes of this Motion that this Court's Order of September 20, 2022 resolves the quiet title issue[3] as to this Defendant, without waiving any appeal and/or revisory action(s) to challenge the Court's Order.[4]
3. On October 4th, 2022 Defendant Justin Holder wrote a letter to Honorable Andrew Wilkinson requesting "to file a Motion requesting the Court Alter and Amend its September 20th, 2022 Order and Opinion, to one more in line with Maryland law and certify it under Md. Rule 2-602(b)." and "Defendant request the Court alter the Order to

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[3] The Defendant acknowledges this Court's decision in law that David Hess the "NN520" deed Grantor intended to use "courses and distances" rather than the Little Antietam Creek as a monument in the September 10th, 1832 grant to Samual Cost. The Defendant would assert the factual location of the courses and distances is one for the jury, but ultimately of little value as will be demonstrated *infra*; all possibilities fall into the stream or 100 year floodplain, see Exhibit 1.

[4] Defendant Holder, without limitation thereto, preserves the following Aug. 2nd, 2022 arguments:
- (a) The Court's reliance on *Giles* to overturn the "monument rule" is contradicted by facts in the records, see Defendants Oct. 4th, 2022 letter to the Court incorporated herein by reference;
- (b) Plaintiff Estes can not prove his recorded title in the land records of Washington County; to land south of the spring branch or North of the 8th line on the Keedy deed (Young Predecessor at IN17 folio 538), evidenced by the deeds referenced in Liber 960 folio 502;
- (c) Plaintiff Estes can not meet his burden to prove claim to right by adverse possession;
- (d) Plaintiff Estes can not meet his burden to rebut the common law presumption of a*d medium filum aquaes sub publicum,* codified in MD. Real Property Code Ann. § 2-114 without litigating the "water of the State" in violation of the Jan. 7th, 2022 Stipulated Dismissal of DNR;
- (e) Frederic Frederick, agent of Justin Holder (owing the duty thereto); knowingly and intentionally concealed from Justin Holder a title line deviation in the northeast corner of Plat 10955 with actual knowledge Justin Holder was ignorant to the deviation of the northern 2 lines as described on the "NN520" deed at the time; Plat 10955 did not contain the name "Benjamin Estes" as a grantee in accordance with MD. Real Property Code Ann. § 4-101;
- (f) Plaintiff Estes had no jurisdiction in equity to request relief by Quiet title to property West of the Little Antietam Creek in Keedysville, MD, because he was not in possession of it; and
- (g) Plaintiff was not entitled to relief under MD. Real Property Code Ann. § 14-108 "if an action at law [in Count I - Trespass was] pending to enforce or test the validity of the title" the bifurcation of Count I with a jury demand being a direct bar to relief in equity by law.

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acknowledge that even though the line is drawn west of the thread, the rights to the 'waters of the State' including the flood plain extend to the eastern boundary of Uncle Eddies brokedown palace LLC, and this case will resolve itself in law."

4. On October 6th, 2022 the Court ordered "Defendant [Holder] may file a motion."
5. On January 7th, 2022 Plaintiff Stipulated dismissal of Defendant DNR stating:

> "the right of the public, if any, to make use of the waters of the Little Antietam Creek, or any other waters on the Estes Property, are not being litigated or adjudicated in this case as stated and memorialized in the jointly-filed Stipulation filed in this case on December 17, 2021...the State of Maryland reserves the right to regulate or assert claims over the water resources of Little Antietam Creek (or any other creeks, streams or tributaries), including nontidal waterways, the nontidal floodplain, nontidal wetlands and their buffers, and water appropriations"[5]

STATUTORY AUTHORITY

6. MD. Environment Code Ann. § 5-101: "(i) 'waters of the State' include: ...(4) All ponds, lakes, rivers, streams, public ditches,...; and (5) The floodplain of free–flowing waters determined by the Department on the basis of the 100–year flood frequency."
7. "**A.** General. **(1)** ...Maryland's -waters are organized by sub-basin. For most Class I, I-P, III, III-P, IV, or IV-P waters,....**Q.** Sub-Basin 02-14-05: Upper Potomac River Area....(d) Little Antietam Creek and all tributaries" *Md. Code Regs. 26.08.02.08*
8. MD. Environment Code Ann. § 5-503 "(a) (1) A person shall obtain, on written application to the Department, a permit from the Department to: (i) Construct, reconstruct, or repair any reservoir, dam, or waterway obstruction; ...Change, in any manner, in whole or part the course, current, or cross section of any stream or body of water within the State, **except tidal waters.**" (Emphasis Supplied)
9. MD. Local Government Code Ann. § 1-1311[6] "(a) A county or municipality, in developing a construction ...[that] crosses a waterway, shall consider any reasonable and

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[5] Plaintiff Estes conceded same in a March 11th, 2022 hearing in case C-21-CV-21-420, see Exhibit 2.

[6] See Exhibit 3, Final Approval of House Bill 0797 - Chapter 140 of the Acts of 2013.

appropriate measures to provide or improve in the vicinity of the bridge or other transportation facility **water access for fishing, canoeing, kayaking, or any other nonmotorized water dependent recreational activity.**" (Emphasis Supplied)

10. "**A.** General. **(1)** The determination of the designated use of a water body shall include consideration of the following factors: **(a)** Existing conditions; and **(b)** Potential uses which may be made possible by anticipated improvements in water quality. **(2) The actual uses of surface water are not limited to those designated in this chapter**. **Any reasonable and lawful use is permitted provided that the surface water quality is not adversely affected by the use.** **B.** Specific Designated Use Classes. **(1)** Class I: **Water Contact Recreation**,...includes waters that are suitable for: **(a) Water contact sports**; **(b) Play and leisure time activities where individuals may come in direct contact with the surface water; (c) Fishing;** ...**(5)** Class III:...includes all uses identified for Class I [and]...**(6)** Class III-P:.. includes: **(a)** All uses identified for Class III waters; and **(b)** Use as a public water supply." (Emphasis Supplied) *Md. Code Regs. 26.08.02.02*
11. MD. Criminal Law Code Ann. § 6-402 "(a) A person may not enter or trespass on property that is posted conspicuously against trespass by:...(2) paint marks that: ... are made on trees or posts that are located: 1.at each road entrance to the property; and 2. **adjacent to public roadways, public waterways,** ..." (Emphasis Supplied)
12. MD. Real Property Code Ann. § 2-114 "(a) Except as otherwise provided, any deed, will, or other instrument that grants land binding on any street or highway, or that includes any street or highway as 1 or more of the lines thereof, shall be construed to pass to the devisee, donee, or grantee all the right, title, and interest of the devisor, donor, or grantor (hereinafter referred to as the transferor) in the street or highway for that portion on which it binds...."
13. "This regulation defines the term 'navigable waters of the United States' as it is used to define authorities of the Corps of Engineers. It also prescribes the policy, practice and procedure to be used in determining the extent of the jurisdiction of the Corps of

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Engineers and in answering inquiries concerning 'navigable waters of the United States.. This definition does not apply to authorities under the Clean Water Act which definitions are described under 33 CFR parts 323 and 328."[7] 33 C.F.R. § 329.1[8]

14. "A stream may be navigable despite the existence of falls, rapids, sand bars, bridges, portages, shifting currents, or similar obstructions. Thus, a waterway... might have had substantial obstructions which were overcome by frontier boats and/or portages...even though boats had to be removed from the water in some stretches, or logs be brought around an obstruction by means of artificial chutes..." 33 C.F.R. § 329.10

15. "**(a)**Effect on determinations. Although **conclusive determinations of navigability can be made only by federal Courts**,...Official determinations by an agency made in the past can be revised or reversed as necessary to reflect changed rules or interpretations of the law." (Emphasis Supplied) 33 C.F.R. § 329.14

COMMON LAW AUTHORITY

In English Common law *Ad medium filum aqua sub publicum*[9] has been recognized as the presumption in the grant of land bordering streams as codified in Md. Real Property Law, see *ANNAPOLIS ROADS v. Lindsay*, 45 A.3d 749, 205 Md. App. 270 (2012) at p. 766 - 768:

---

[7] See 40 CFR 230.3(s) "The term waters of the United States means: ...All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:...From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or... Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;"

[8] See also § 9 & 10 of the Rivers and Harbors Appropriation Act of 1899 33 U.S.C. 401 & 403.

[9] See *Dep't of Natural Resources .v. France,* 357 A.2d 78, 277 Md. 432 (1976) citing *Linthicum v. Shipley,* 140 Md. 96, 116 A). 871. "The prima facie presumption is that riparian proprietors of non-navigable (non-tidal) streams own the soil covered by such rivers *ad filum medium aquae*" and "*sub publicum*" *Browne v. Kennedy*, 5 Harr. & J. 195 (Md. 1821). Also See *Fisher v. Haldeman*, 61 U.S. 186, 15 L. Ed. 879 (1858); *Iowa v. Illinois*, 147 U.S. 1, 13 S. Ct. 239, 37 L. Ed. 55 (1893); *Bailey v. Driscoll*, 117 A.2d 265, 19 N.J. 363 (1955); *R. v. Nikal*, 1996 S.C.R.1 1013 (1996); *Lord v. Commissioners of Sydney*, 12 Moo. P.C. 473, 12 Moore P.C. 473 (1859); *Arnold v. Mundy*, 6 N.J.L. 1 (1821);*R. v. Lewis*, 1996 S.C.R.1 921 (1996).

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"Md. Ann.Code, Art. 21 § 5-114 (1957, 1973 Repl.Vol.) provides:

> Any deed, will, or other instrument which conveys land in this State, binding on any street or highway, or when any street or highway shall be one or more of the lines thereof, shall be construed to pass to the devisee, donee or grantee therein, all the right, title, and interest of the devisor, donor, or grantor in the street or highway; provided, however, to the extent the devisor, donor or grantor owns other land on the opposite side of the street or highway, then the deed, will, or other instrument shall be construed to pass the right, title, and interest of the devisor, donor, or grantor only to the center of that portion of the street or highway upon which the two (or more) tracts co-extensively bind. The foregoing provisions shall be inapplicable in either of the above instances if the devisor, donor or grantor shall in express terms in the writing by which the devise, gift or conveyance is made, reserve to himself all the right, title and interest to the said street or highway.

See Boucher v. Boyer, 301 Md. 679, 687, 484 A.2d 630 (1984) ('This statute, which applies to private and public streets, extends the common law presumption that title to the center of a binding street passes to the grantee.') (citations omitted). This statute was later recodified at Md. Code (1981 Repl.Vol.), R.P. § 2-114, effective July 1, 1974, which provided as follows:

> Unless a contrary intention appears in the deed, will, or other instrument, if any deed, will, or other instrument grants or bequeaths land binding on any street or highway, or if any street or highway is one or more of the lines of the land, the deed, will, or other instrument passes to the legatee, donee, or grantee, all the right, title, and interest of the testator, donor or grantor in the street or highway. Except that to the extent the testator, donor, or grantor owns other land on the opposite side of the street or highway, the deed, will, or other instrument passes the right, title, and interest of the testator, donor, or grantor only to the center of that portion of the street or highway on which the two or more tracts coextensively bind. [footnote - MD. Real Property Code Ann. § 2-114 omitted]

See Boucher, 301 Md. at 686 n. 1, 484 A.2d 630.

In *Callahan v. Clemens,* 184 Md. 520, 526, 41 A.2d 473 (1945), the Court of Appeals explained that Art. 21, § 5-114, 'provides that any conveyance binding upon a highway carries to the grantee title to the center thereof, in the

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absence of an express provision to the contrary. This applies to a private as well as a public way. The statute merely extends a presumption that was recognized at common law.'[10] (Citations omitted). In *Bowie v. W. Md. R.R. Terminal Co.,* 133 Md. 1, 11-12, 104 A. 461 (1918), the Court of Appeals explained:

> 'Reasons for These Rules — **The natural presumption where a deed conveys land bordering on a stream or highway is, that the grantor means to convey what he owns, and not to reserve a strip of land of no value to him, but the loss of which to the grantee might be productive of great injury.** He has power by apt words to reserve what and as much as he pleases, or so to frame the language of his conveyance as to limit the land conveyed to the line of the stream or highway, without extending further, and in all such cases, courts are bound to give effect to his expressed intention. But in the absence of words showing such an intention, it is not presumed that the grantor intended to retain in himself the fee to the street or stream when he has parted with the adjoining land. **Therefore it may be said to be a universal rule, that a deed giving a stream as a boundary will convey title to the center of the stream or to low or high water mark, *depending upon how far the grantor's title extends.*** By such a description the grantor will convey all that he owns, unless a contrary intent appears from the language of the deed.
> **The deed is taken most strongly against the grantor in the application of this rule and courts will not favor the presumption that he has retained title to the bed of the stream**.'" (Emphasis *Added* and **Supplied**)

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[10] In *Peabody Heights Co. v. Sadtler,* 63 Md. 533, 536-37 (1885), the Court of Appeals described the common law as follows: "The established inference of law is, that a conveyance of land bounded on a public highway carries with it the fee to the centre of the road, as part and parcel of the grant. The idea of an intention in the grantor to withhold his interest in a road to the middle of it, after parting with all his right and title to the adjoining land is never to be presumed. It would be contrary to universal practice; and it was said, in *Peck v. Smith,* 1 Conn. 103 (1814), that there was no instance where the fee of a highway, as distinct from the adjoining land, was ever retained by the vendor. It would require an express declaration, or something equivalent thereto, to sustain such an inference; and it may be considered as the general rule, that a grant of land bounded on a highway or river carries the fee in the highway or river to the centre of it, provided that the grantor at the time owned to the centre, and there be no words or specific description to show a contrary intent. But it is competent for the owner of a farm or lot, having one or more of its sides on a public highway, to bound it by express terms on the side or edge of the highway, so as to rebut the presumption of law, and thereby reserve to himself his latent fee in the highway. He may convey the adjoining land without the soil under the highway, or the soil under the highway, without the adjoining land. If the soil under the highway passes by a deed of the adjoining land, it passes as parcel of the land, and not as an appurtenant." 3 *Kent Comm.,* 433.

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The Court In *Bowie v. W. Md. R.R. Terminal Co.,* 133 Md. 1, 11-12, 104 A. 461 (1918) affirming centuries of common law that has never, nor should it ever be, overturned:

> "Deeds: abutting on streets or navigable waters; middle of street or stream; *Browne v. Kennedy*, 5 H. J. 195, affirmed.
>
> * * *
>
> JUDGE BUCHANAN said: 'It is very certain that by the common law the right was in the King of England; and it seems equally clear to me, that he had the capacity to dispose of it *sub modo*. Whatever doubts are entertained on the subject, they probably have arisen from inattention to the distinction between the power of granting an exclusive privilege in violation or restraint of a common piscarial [fishing] right or other common right, as that of navigation, and the power of granting the soil *aqua cooperta,* subject to the common user. The subject has, *de communi jure,* an interest in a navigable stream, such as a right of fishing and of navigating, which can not be abridged or restrained by any charter or grant of the soil or fishery since *Magna Charta* at least. But the property in the soil may be transferred by grant, *Hargrave's Law Tracts,* 17, 22, 36, 37 — subject, however, to the *jus publicum,* which can not be prejudiced by the *jus privatum* acquired under the grant. This distinction runs through all the books, and wherever grants have been held not to pass the soil, it was not because the King had not the capacity or right to grant it, but because there were not apt words in the grant to effect the purpose.'
>
> *.*.*
>
> Then on page 206 he said: 'If, therefore, where a man, having an estate through which a private river runs, conveys away his land lying on one side of the stream and describes it as bounding on the river, the purchaser will, by operation of law, hold to the middle, it would seem, by parity of reason, that if the same man, having an estate through which a public river runs, the soil of the bed of which makes a part of his estate as in the case of a private river, conveys away the land lying on one side, and makes the river the boundary, the purchaser would by the same operation of law be entitled to hold, in respect of the right of soil, to the middle of the stream.'
>
> * * *
>
> JUDGES JOHNSON and MARTIN concurred in that opinion. JUDGE EARLE dissented... Although that case has been cited at least fourteen times (see *Shepard's Md. Cit*.) it has never been overruled, and it might effect titles to land to overrule a case which had been accepted as law for so many years. ...

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> The decision in *Browne* v. *Kennedy* was a logical one, as the general principle is that, in the absence of a statute regulating it, the extent to which a deed of an owner of land abutting on a street or stream goes depends upon how far his title extends, unless he limits the conveyance by appropriate terms.
>
> In 2 *Devlin on Real Estate,* Sec. 1028, it is said the rule is that when lands are bounded by navigable streams or tidewaters, the grantee's right extends only to high-water mark, but that is because it is very unusual for the grantor to own the bed of a navigable stream, and if he does, according to *Browne* v. *Kennedy,* the same rule applies as in case of non-navigable waters. After giving some illustrations in Section 1028, the author in Section 1028 A gives reasons which are very applicable to this case when we keep in mind *Browne* v. *Kennedy*. That section, in part, is:
>
> 'Reasons for These Rules [see *Annapolis Roads supra*].'
>
> In the note to the case of *Hanlon* v. *Hobson,* 24 Col. 284, as reported in 42 *L.R.A.* 552, the annotator says: 'A grant bounding on a stream or on tide water will be held to carry all the land owned by the grantor, in the absence of anything to show an intention not to do so. If the grantor owns to the thread of the stream, the grantee will also do so.' See also *Braxon* v. *Bressler,* 64 Ill. 489; *Brooklyn* v. *Smith,* 104 Ill. 429; *Richardson* v. *Prentiss,* 48 Mich. 90; *Hardin* v. *Jordan,* 140 U.S. 380; *Boston* v. *Richardson,* 95 Mass. 155. Although some of these cases are controlled by statutes or ordinances, the principles are discussed."

Common law authority on Public waterways *eg* "waters of the State" extending to the floodplains is discussed in *Dep't of Natural Res. v. Ocean City*, 332 A.2d 630, 274 Md. 1 (1975): "This contention seems to be based primarily upon Article IV of the Charter of Maryland, 20 June 1632, by which Charles I granted to Caecilius Calvert, Lord Baltimore

> '...with the fishings of every kind of fish, as well of whales, sturgeons, and other royal fish, as of other fish, in the sea, bays, straits or rivers, within the premises, and the fish there taken: ...' 1 Maxcy, Laws of Maryland 1, 2 (1811).
>
> ....and then subjected the grant to the reservation contained in Article XVI:
>
> '...Saving always to US, our heirs and successors, and to all the subjects of our kingdoms of England and Ireland, of US, our heirs and successors, the liberty of fishing for sea-fish, as well in the sea, bays, straits, and navigable rivers, as in the harbours, bays, and creeks of the province aforesaid, and *the privilege of salting and drying fish on the shores of the same province;...'*

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The scope of the rights reserved is strikingly reminiscent of Roman law.[11] This is not surprising, since Justinian's Institutes were well known in Britain by the 13th century. *See* 1 F. Pollock & F. Maitland, The History of English Law 119 (2d ed. 1905)."

"At the outset, it seems to us that no analogy can be drawn to the common law rule pertaining to non-tidal stream boundaries in undertaking to fix a boundary upon navigable waters. Although it is true 'that a grant, by the owner of the bed of a non-navigable stream, of land bounding thereon, conveys, even without express language, ownership to the middle of the stream.' *Linthicum v. Shipley*,140 Md. 96, 99, 116 A. 871, 872 (1922); *Day v. Day*, 22 Md. 530 (1865); *Browne v. Kennedy*, 5 H. J. 195 (1821), a person owning land, abutting on navigable water, where the land under the navigable water is owned by the state, owns title only to the high water mark — subject of course to certain riparian rights as an incident to his ownership of such land. *Van Ruymbeke v. Patapsco Industrial Park*,261 Md. 470, 475, 276 A.2d 61, 64 (1971); *Toy v. Atlantic Gulf and Pacific Co*.,176 Md. 197, 206, 4 A.2d 757, 762 (1939); *Smoot Sand and Gravel Co. v. Columbia Granite and Dredging Corp*.,146 Md. 384, 388, 126 A. 91,

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11 T. Cooper, The Institutes of Justinian, Book 2, Title 1, 67-68 (1812):
"§ 1

"Things common to mankind by the law of nature, are the air, running water, the sea, and consequently the shores of the sea; no man therefore is prohibited from approaching any part of the sea-shore, whilst he abstains from damaging farms, monuments, edifices, & c. which are not in common as the sea is."

* * *

"§ 3

"All that tract of land, over which the greatest winter flood extends itself, is the sea-shore."

* * *

"§ 5

"The use of the sea-shore, as well as of the sea, is also public by the law of nations; and therefore any person may erect a cottage upon it, to which he may resort to dry his nets, and hawl them from the water; for the shores are not understood to be property in any man, but are compared to the sea itself, and to the sand or ground which is under the sea."

The Latin text of the Institutes uses the word *casa* in § 5 which is translated as *cottage.* Alternate translations are *cabin, shed,* or *hut.* The Latin text of the Maryland Charter uses the words *casa* (cabin) and "tuguriola." *Compare tugurium* (hut). *See* The White Latin Dictionary 97, 622 (1948).

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92 (1924). See also *Green v. Eldridge*,230 Md. 441, 446, 187 A.2d 674, 676 (1963)." *Dep't of Nat. Resources v. France*, 277 Md. 432, 450 (Md. 1976)

"The inherent common law right is to the water's use, and that, of course, presupposes the concomitant right of access." *Wicks v. Howard*, 388 A.2d 1250, 40 Md. App. 135 (Ct. Spec. App. 1978). See also *People's Counsel for Baltimore Cnty. v. Md. Marine Mfg. Co*., 316 Md. 491, 493 n.1 (1989):

> "There are several rights which are enjoyed by the riparian owner. Not the least of these is the right to the flow of water by the riparian property in its natural state. *Paper Company v. Zeitler,* 180 Md. 395, 397, 24 A.2d 788 (1942). The riparian proprietor also has a right to reasonable use of the water, subject to the same right of every other riparian owner, for legitimate domestic, agricultural and manufacturing purposes. *Id.; Kelly v. Nagle,* 150 Md. 125, 137-38, 132 A. 587 (1926).
>
> * * *
>
> The rationale behind this right, 'the sole purpose of the rule, was to assure to the riparian owner that he would never be cut off from his access to water.' *Bd. of Pub. Works v. Larmar Corp.,* 262 Md. 24, 36, 277 A.2d 427 (1971). *See also Steinem v. Romney,* 233 Md. 16, 23, 194 A.2d 774 (1963) ('[the] fundamental riparian right — on which all others depend, and which often constitutes the principal value of land — [is] access to water'). We have noted that the right of access to the water is fundamental when 'assessing the changes which have occurred in riparian rights down the corridor of years.' *Id. See also Rayne v. Coulbourne,* 65 Md. App. 351, 500 A.2d 665 (1985)."

"The right to navigate on navigable waters is a public right, not one that attaches only to the owner of riparian property. 'The public [has] a right, at common law, to navigate over every part of a common navigable river....' *Garitee v. M. & C.C. of Balto.,* 53 Md. 422, 436 (1880). As the Supreme Court of Ohio has put it:

> Every riparian owner has the right of ingress and egress between his land and the water. In addition, as a member of the public, he has the right to travel on navigable streams. It is important to distinguish these rights. The right to go from his land to the river and from the river to his land is a private property right of the riparian owner. Navigation on public waters is

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> exclusively a public right. Everyone has an equal right to the use of the water for travel and transportation.

State v. Masheter, 1 Ohio St.2d 11, 13, 203 N.E.2d 325, 327 (1964). And as another court said, regarding a riparian owner's attempt to obtain removal of a private bridge over a navigable channel,

> 'An obstruction in front of one's own premises may prevent him from entering upon the highway, and thus interfere with a peculiar right. But when he is once upon the highway he is a traveler, like the rest of the public; and though an obstruction at a distance may as effectually prevent ingress and egress as when it is opposite his door, yet the right to pass along the way is one which he shares in common with the general public.'

Whitehead v. Jessup, 53 F. 707, 709 (E.D.N.Y. 1893) (quoting J. Gould, *Waters* 247-248 (2d ed. 1891))." *Becker v. Litty*, 566 A.2d 1101, 318 Md. 76 (1989).

FACTS NOT IN DISPUTE IN SUPPORT

Defendant Uncle Eddies brokedown palace LLC's prior (to Frederick Frederick's deviation) deed recorded among the land records of Washington County, Maryland at Liber 408 folio 137 ("Eddie's Old Deed") states "and running thence down said creek" the following 4 courses and distances match precisely with the courses and distances on Plaintiff Estes prior (to Frederick Frederick's deviation) deed recorded among the land records of Washington County, Maryland at Liber 960 folio 502 (excepting a 2 degree variation on the 1st line) and [thence down said creek] the 5th through 8th courses and distances on the "NN520" deed referenced in the Order; see excerpts from John Dowling deposition at Defendant Justin Holder's Opposition to Plaintiff Estes' Motion for Summary Judgement p. 2-5 incorporated herein by reference. That Mr. Frederick set a stake in the middle of the Creek at the end of the second line on Eddie's Old Deed, and Mr. Frederick opined the first 2 (southern lines) fell in the creek or on the bank. Plat 10955 depicts the shared boundary in the Courts Order in the limits of the 100 year floodplain. Plaintiff Estes's

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Exhibit 13 to his Motion for Summary Judgement, incorporated herein by reference contains Mr. Frederick testifying about the survey work and plats related to the boundary:

> "...And, Mr. Holder, you may recall I met you out there, and showed you that **you didn't own the creek as you go further around the creek beyond Estes**. And you approached a neighbor and you were **able to acquire that additional land from him so you could own to the creek**." & "When -- when he was looking for something that would -- you know, **in his opinion, he always, I guess, thought he went to the creek.** And so I wrote that letter with the understanding that he and Mr. Estes were going to try to work things out."

In an October 3rd, 2022 Motion to Quash Subpoena of Frederic Frederick, Mr. Frederick attached as Exhibit 3 his deposition transcript incorporated herein by reference stating:

> "Well, it stops right there because Estes owns on one side and you own on the other. When it goes into the creek, it is my understanding that if you can float down there in an innertube, it's navigable, and so you would both have rights. And fishermen may have rights in a canoe or a kayak to go down through that creek."

ARGUMENT

When Defendant Justin Holder transacted the purchase of property described on Eddie's Old Deed he was ignorant of title and survey, relying on Mr. Frederick. Defendant Justin Holder did rely on common knowledge (and law) that the Little Antietam Creek was a public waterway (which surveyor Frederic Frederick apparently agrees with facts *supra*), and believed Eddie's title should extend into the thread of the stream. Mr. Frederick acknowledged this believe in the deposition that Eddie "didn't own the creek as you go further around the creek beyond Estes" and Justin Holder as manager for Eddie was "able to acquire that additional land [parcel 414]from [Bryan Curtis Smith] so you could own to the creek." & "when he was looking for something that would -- you know, in his [Justin Holder's] opinion, he always, I guess, thought he went to the creek." It was not the intention of Justin Holder to disclaim a strip of land in the northern area of the boundary that would result in the loss of Eddie's riparian rights. MD. Environment Code Ann. § 5-101: "(i) 'waters of the State' include: ...(5) The floodplain of free–flowing waters determined by the

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Department on the basis of the 100–year flood frequency." MD. Real Property Code Ann. § 2-114 "(a) Except as otherwise provided, any deed, will, or other instrument that grants land binding on any street or highway, or that includes any street or highway as 1 or more of the lines thereof, shall be construed to pass to the devisee, donee, or grantee all the right, title, and interest of the devisor, donor, or grantor (hereinafter referred to as the transferor) in the street or highway for that portion on which it binds. "The statute merely extends a presumption that was recognized at common law" *Annapolis Roads supra.* Thus by the line on plat 10955 being drawn in the 100 year floodplain and the floodplain being part in parcel of the public waterway it would be reasonable to apply the common law doctrine of a*d medium filum aquaes sub publicum* and the "universal rule" from *Bowie supra* affirming *Kennedy supra* in further delineating the Honorable Courts Order. Further MD. Real Property Code Ann. § 2-114 "(b) If the transferor owns other land on the opposite side of the [waterway], the deed... shall be construed to pass the right, title, and interest of the transferor **only to the center** of that portion of the [waterway.]" (Emphasis Supplied) Plaintiff Estes has still taken a position not contemplated by statute, or the ancient common law established in the state and the Court's reliance on *Giles* in its Order is of no avail.

There is little value in owning the bed of a public way,[12] the value is in access to the public way itself which would include the floodplain of a waterway or right of way of a roadway. To rule that touching the creek bed with an oar is a trespass is similar to ruling changing a flat tire or running through a pothole is a trespass. This opinion would create more problems than it could solve and that must be the "reason for these rules" *Bowie supra.* Plaintiff Estes has taken an untenable position, and by way of a January 7th, 2022 stipulated

[12] "The lands in Maryland covered by water were granted to the Lord Proprietor by Section 4 of the Charter from King Charles I to Caecillius Calvert, Baron of Baltimore, his heirs, successors and assigns, who had the power to dispose of such lands, subject to the public rights of fishing and navigation. *Browne v. Kennedy,* 5 H & J. 195 (1821). By virtue of Art. 5 of the Declaration of Rights in the Maryland Constitution, the inhabitants of Maryland became entitled to all property derived from and under the Charter and thereafter the State of Maryland had the same title to, and rights in, such lands under water as the Lord Proprietor had previously held. These lands were held by the State for the benefit of the inhabitants of Maryland and this holding is of a general fiduciary character." *Kerpelman v. Bd. of Public Works*, 276 A.2d 56, 261 Md. 436 (1971).

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dismissal has no further right to litigate said position, the State of Maryland or the Untied States are not parties to the action to the extent Estes wishes to terminate the public's rights.

CONCLUSION

The Dec. 17th, 2021 Stipulation and Jan. 7th, 2022 Stipulated Dismissal of MD DNR prohibit Plaintiff Estes from litigating "waters of the State" and therefore Plaintiff Estes is barred from entering factual evidence necessary to meet his burden of proof required to rebut the common law presumption *ad medium filum aquaes sub publicum* as a matter of law. MD. Real Property Code Ann. § 2-114 is also conclusive that title extends to the center line of the public rights. This Honorable Court may revise its Sept. 20th, 2022 Order to reflect the same and terminate this litigation. Plaintiff Estes redress lies with the legislature.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of October 2022, a copy of the foregoing Defendant Justin Holder's Motion to Alter or Amend Judgment was served via the MDEC system to :

Timothy Maloney, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se;*

Justin K. Holder, *Pro Se*

Justin K. Holder

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Exhibit 1

Exhibit A - Frederick Pin SW Corner - Plat 4040

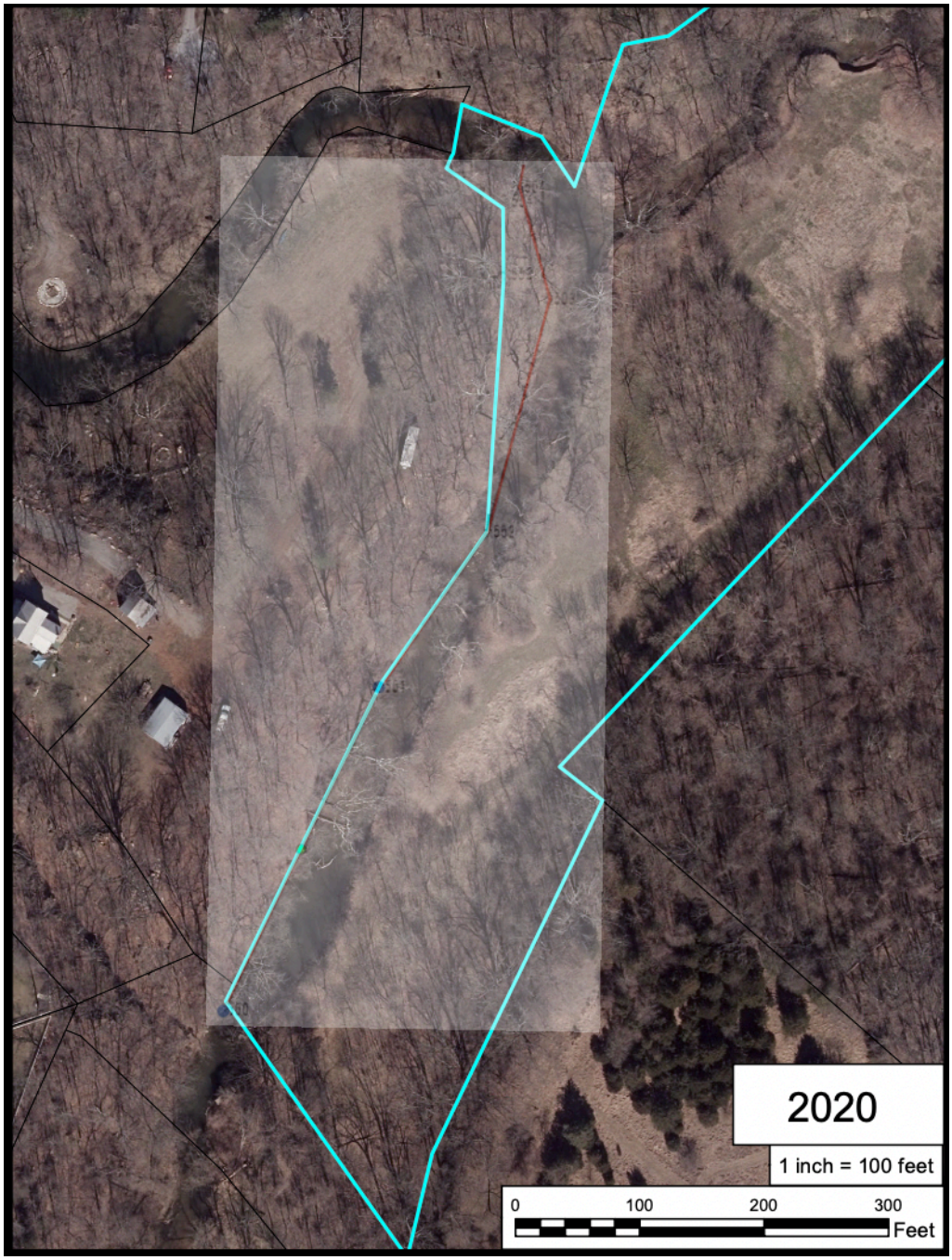

Exhibit B - AESI 1996 RR ROW LINE 11.5 ADDED back to 5th line of NN520 - Frederick bearings and Plat 4040 orientation

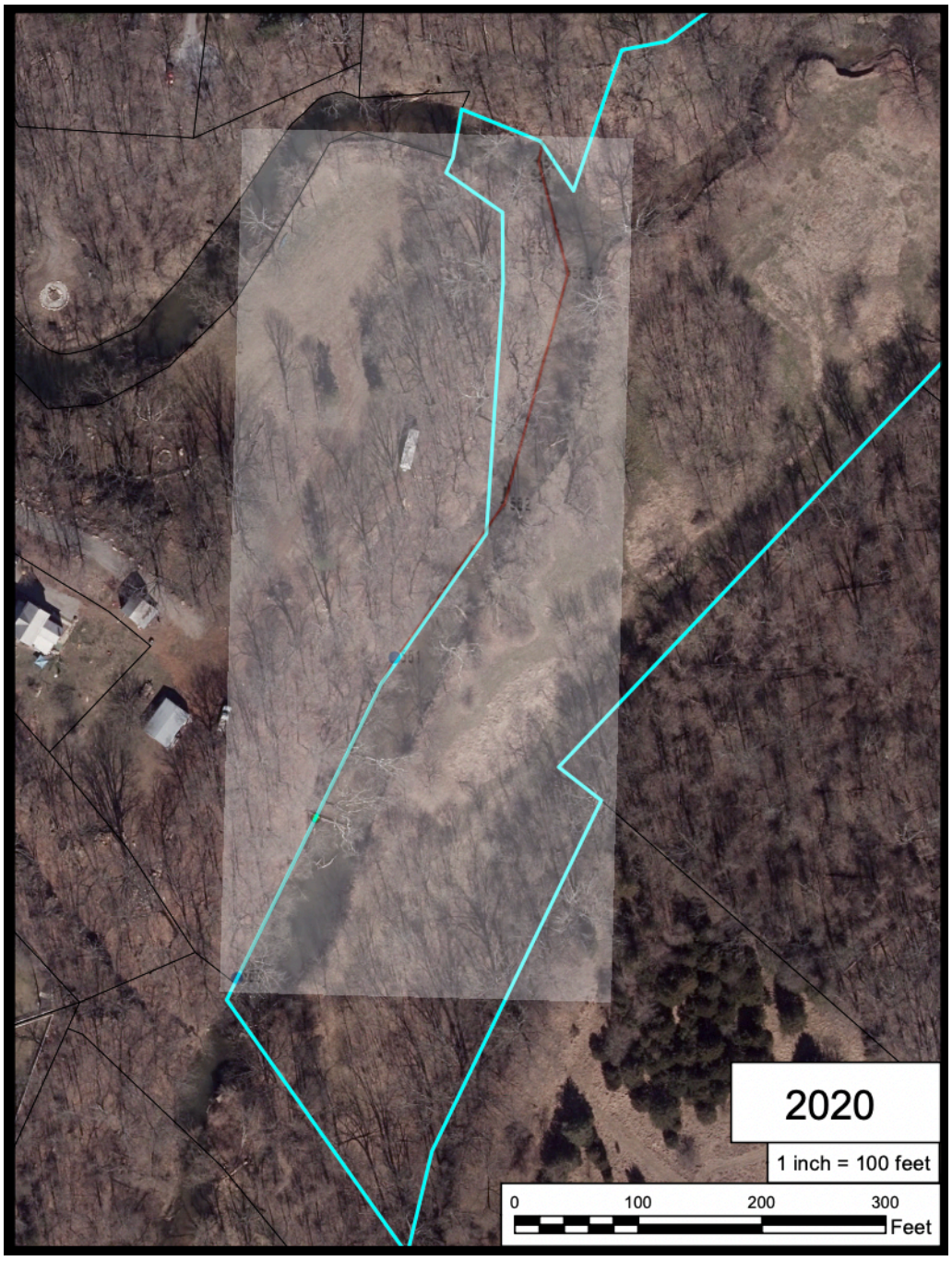

Exhibit C - Start point in Thread of Creek George Nagel - Frederick bearings on NN520 5th and 6th line

Exhibit D - 10 degree rotation of the NN520 line - yellow RR ROW line AESI - Green NN520 4th line

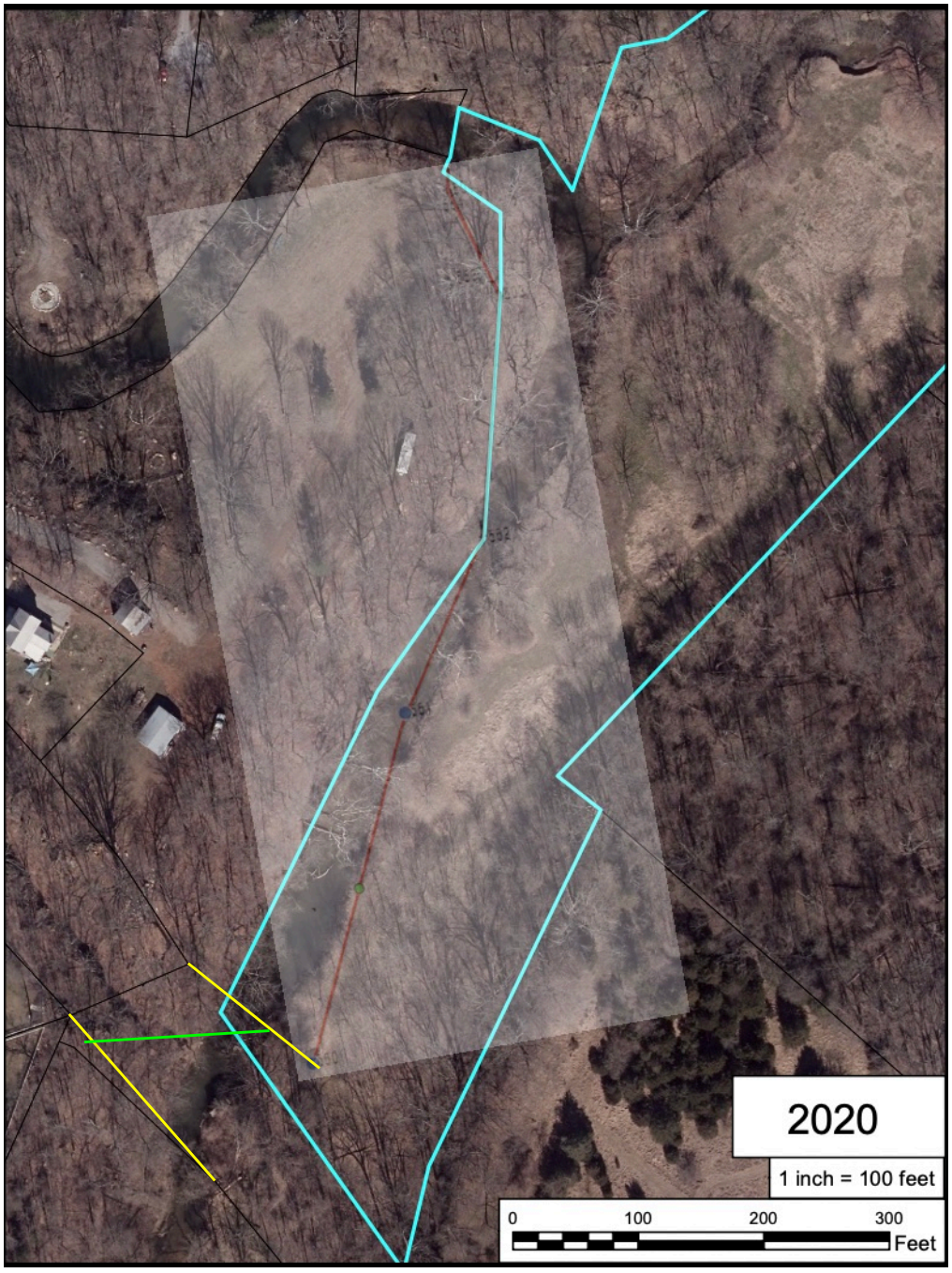

Exhibit E - Closest Match to Dowling Affidavit 7 degree rotation - random start and end point - Dowling Affidavit appears to assume an end point on the 8th line of Reeder Deed Liber IN17 f528

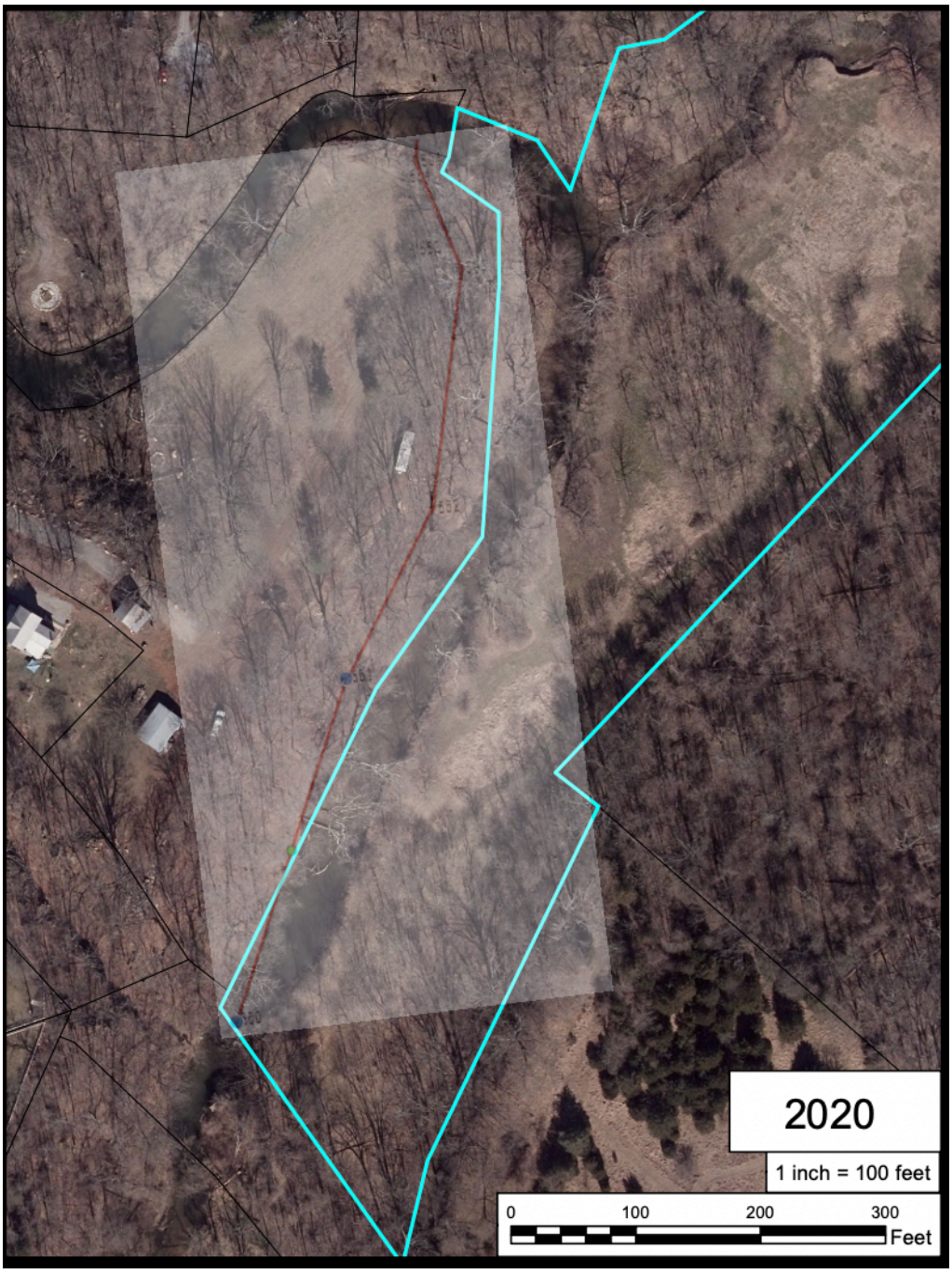

Exhibit I - Plat 9186 overlay on GIS with 8th line of Liber IN17 folio 538 alined and terminating on West bank of Creek - NN520 5th-8th lines in red alined to the plat 9186 and 1st line on GIS from RR ROW - RR ROW at AESI location

Exhibit J - Plat 9186 aligned to 8th line on Liber IN17 f538 and witness stone on West bank of creek - NN520
5th - 8th lines alingned to 8th line on Liber IN17 f538 with the 5th line starting in the thread of the creek